

# FYI<sup>®</sup> Roundup

## For Your Information<sup>®</sup>

### COVID-19 and the workplace: a nine-month recap

A year and a half into the pandemic, employers continue to grapple with unprecedented challenges. Even as federal, state and local governments took steps to help employers and employees alike navigate challenges posed by COVID-19, virus variants spawned new concerns. This special COVID-19 edition *FYI Roundup* features our *FYIs* highlighting noteworthy pandemic-related HR and benefits developments over the past nine months.

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#### Background

Since the onset of the pandemic in 2020, employers across the country have struggled to keep their doors open, payrolls maintained and businesses afloat. Beginning with the Families First Coronavirus Response Act, Congress provided new paid leave and extended jobless benefits to individuals unable to work for COVID-related reasons along with incentives for businesses to avoid layoffs. New federal, state and local mandates were put in place, extended and enhanced as the virus and its variants took hold. Keeping up with evolving guidance from public health authorities and a fluid legal landscape posed ongoing challenges for large and small employers alike. Below, we categorize recent *FYIs* that highlight HR and benefit developments to keep in mind as you look to continue operations or to reopen your workplaces in the coming days.

#### Legislative developments

Two major pieces of legislation were enacted in March 2020 to deal with the COVID-19 emergency — the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act that created the Paycheck Protection Program to help small

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businesses avoid layoffs. In March 2021, Congress enacted an additional \$1.9 trillion coronavirus relief package — the American Rescue Plan Act (ARPA).

### Paycheck Protection Program open for business again

In response to the COVID-19 crisis, the CARES Act created the Paycheck Protection Program, providing short-term forgivable loans to help small businesses stay open and maintain payroll. The Consolidated Appropriations Act of 2021 (CAA), signed by the president on December 27, 2020, renewed and expanded the program. The Small Business Administration reopened it starting on January 11 for first-time loans and on January 13 for second draw loans. (See our [January 21 FYI](#).)

### American Rescue Plan Act provides additional COVID relief

On March 11, President Biden signed the American Rescue Plan Act, a \$1.9 trillion coronavirus relief package. Along with additional funding for virus testing and vaccine distribution, the sweeping legislation included provisions impacting employers, employees, and employee benefit plans. Among other economic relief, it expanded unemployment benefits, increased aid to small businesses, and extended employment-related tax credits. (See our [March 19 FYI](#).)

### Benefit plan issues

In the face of the continuing health emergency, federal regulators sought to provide relief for employee benefit plans as well as their participants and beneficiaries.

### Appropriations Act provides needed health and dependent care FSA relief

Due to the ongoing pandemic, some employees had unused funds remaining in their health care and dependent care FSAs from 2020 that may be subject to forfeiture. The CAA provided relief to those employees by giving them additional time to use those FSA funds. It also included other FSA relief. The relief provided was optional leaving employers to decide what actions, if any, they wanted to take. (See our [January 6 FYI](#).)

### “Physical presence” relief for witnesses and notaries extended

In response to the continued COVID-19 pandemic, the IRS extended the remote notarization relief for certain qualified retirement plan participant elections. (See our [January 27 FYI](#).)

### EBSA issues COBRA subsidy model notices and FAQs

EBSA issued model notices for communicating the availability of COBRA premium assistance provided by the ARPA to those qualified beneficiaries who are eligible for the subsidy, as well as FAQs to help individuals understand when and how they may be eligible for premium assistance. The FAQs also addressed issues related to the notice requirements. (See our [April 9 FYI](#).)

## Testing and diagnostic services

The Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury provided guidance to group health plan sponsors on covering COVID-related diagnostic services and treatment.

### Guidance issued on COVID-19 diagnostic testing and vaccine requirements

The DOL, HHS, and Treasury issued a new set of FAQs that provided additional guidance to group health plan sponsors on various questions related to coverage of COVID-19 diagnostic testing and vaccines. Of particular note, the guidance allowed employers to offer benefits for COVID-19 vaccinations through an EAP or onsite medical clinic without affecting their status as excepted benefits. (See our [March 3 FYI](#).)

## Expanded leave benefits

The DOL provided rolling guidance clarifying employer obligations to provide paid leave benefits for COVID-related reasons.

### FFCRA leave mandate ends as tax credits continue

The Families First Coronavirus Response Act required covered employers to provide COVID-related sick and family leave benefits through December 31, 2020 and provided a refundable employer tax credit to offset their cost. While the leave mandate was not extended into 2021, the CAA did extend employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees through March 2021. (See our [January 12 FYI](#).)

## Return to work considerations

The DOL, EEOC and OSHA issued return-to-work guidance addressing a myriad of stakeholder concerns.

### OSHA updates COVID-19 guidance for employers

On January 29, the Occupational Safety and Health Administration (OSHA) published updated COVID-19 guidance on workplace safety. While not an enforceable OSHA standard, it likely previewed what may be included in any emergency temporary standards aimed at reducing the risk that workers may contract COVID-19 in the workplace. (See our [February 11 FYI](#).)

### OSHA issues COVID-19 emergency temporary standard for healthcare and updated guidance for all industries

On June 10, OSHA released a COVID-19 Emergency Temporary Standard (ETS) for healthcare employers, effective immediately upon publication in the Federal Register. The agency also updated

guidance for non-healthcare employers on mitigating and preventing the workplace spread of COVID-19. (See our [June 17 FYI](#).)

### **Jab or job? Biden's COVID-19 action plan includes vaccine mandates**

On September 9, the Biden administration issued its COVID-19 Action Plan. The plan includes sweeping new employer mandates aimed at increasing workforce vaccination rates across the country. Legal challenges are expected as further details emerge. (See our [September 13 FYI Alert](#).)

## **State and local mandates**

States and cities created new and revised existing employer mandates to provide sick and vaccine-related leave as well as COVID-related job protections.

### **New York releases new COVID-19 sick leave guidance**

In March 2020, New York enacted legislation authorizing sick leave for employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. On January 20, 2021, the New York State Department of Labor issued new guidance on benefits available to employees under the state's so-called quarantine law. (See our [February 9 FYI](#).)

### **New York releases guidance on COVID-19 vaccine leave law**

On March 12, New York state enacted a law requiring employers to provide paid leave for COVID-19 vaccinations effective immediately. It provides up to four hours of leave per injection that cannot be charged against other leave accruals. FAQs issued by the state Department of Labor clarified certain rights and paid leave obligations for New York employers under the new law. (See our [April 6 FYI](#).)

### **San Francisco extends reemployment rights for laid-off workers**

Last year, a San Francisco emergency ordinance created a temporary right to reemployment for certain employees who were laid off due to the COVID-19 pandemic. On April 6, the Board of Supervisors passed a new "Back to Work" ordinance, which extended rehire protections and made several changes to the emergency ordinance that expired on March 2, 2021. The ordinance became effective on May 16. (See our [April 29 FYI](#).)

### **New York's HERO Act requires new COVID-related workplace protections**

On May 5, Governor Andrew Cuomo signed the New York Health and Essential Rights (HERO) Act into law, effective June 4. The HERO Act requires New York employers to implement safety standards and a prevention plan to curb the spread of COVID-19 and other airborne infectious diseases in the workplace. In addition, it requires most businesses to permit the creation of joint employer-employee workplace safety committees. (See our [May 18 FYI](#).)

### New York amends HERO Act

The New York HERO Act required employers to adopt certain health and safety measures to curb the workplace spread of COVID-19 and other airborne infectious diseases. On June 11, Governor Andrew Cuomo signed amendments to the HERO Act into law clarifying employer obligations and applicable deadlines. (See our [June 16 FYI](#).)

### New York issues model disease prevention plans under HERO Act

The New York HERO Act required employers to implement certain health and safety standards and to adopt a plan to prevent the workplace spread of COVID-19 and other airborne infectious diseases. On July 6, the state DOL published an exposure prevention standard, a generally-applicable model disease prevention plan and 11 industry-specific model plans, triggering a 30-day window for employers to adopt the model plan relevant to their industry or to create their own prevention plan. (See our [July 16 FYI](#).)

### Los Angeles expands COVID vaccine-related paid sick leave

On June 24, Los Angeles Mayor Eric Garcetti revised an earlier emergency order and issued a new order requiring employers to provide paid time off for employees to receive or recover from COVID-19 vaccination. (See our [July 16 FYI](#).)

### Pittsburgh's latest COVID-19 paid sick leave ordinance

On July 29, Pittsburgh enacted a new Temporary COVID-19 Paid Sick Leave Ordinance, which is slated to remain in effect through July 29, 2022. The ordinance requires employers with 50 or more employees to provide up to 80 hours of emergency paid sick leave for certain COVID-19-related reasons. It replaced a similar ordinance that was in effect from December 8, 2020 through June 17, but with some important differences. (See our [August 17 FYI](#).)

#### **2021 Reporting and Disclosure (R&D) Guide**

Now available to help you meet your employee benefit R&D obligations, download the latest edition of Buck's *Reporting and Disclosure Guide: Retirement and Welfare Benefit Plans*.

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